

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

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GREGORY SMITH, #365-935

Petitioner

-vs-

PAT HURLEY, Warden

Respondent.

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: CASE NO. 1:04 CV 1393  
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: ORDER GRANTING PETITIONER'S  
: MOTION TO ALTER AND AMEND  
: JUDGMENT, DENYING PETITIONER'S  
: MOTION FOR A NEW TRIAL, GRANTING  
: RESPONDENT'S MOTION TO PLACE  
: CASE ON THE COURT'S ELECTRONIC  
: CASE FILING SYSTEM AND ORDERING  
: PETITIONER'S COUNSEL TO USE  
: ELECTRONIC CASE FILING  
: FORTHWITH AND HENCEFORTH

UNITED STATES DISTRICT JUDGE LESLEY WELLS

On 26 November 2004, petitioner, Gregory Smith ("Mr. Smith"), through counsel Paul Mancino, Jr. ("Mr. Mancino") placed before the Court a motion for a new trial or to alter and amend judgment, pursuant to Fed. R. Civ. P. 52 and 59. (Docket # 19). Mr. Mancino avers that he did not receive a copy of Magistrate Judge Perelman's Report and Recommendation ("R & R") issued on 18 October 2004, and consequently could not file timely objections. (Document # 19, Affidavit of Paul Mancino, Jr., ¶ 4). Having received no objections to the R & R, the Court entered judgment dismissing the petition for writ of habeas corpus with prejudice on 16 November 2004. (Docket # 18).

Upon consideration of the matter, the Court denies the Petitioner's motion for a new trial, but will grant Mr. Smith's timely motion to alter or amend judgment, pursuant to Fed. R. Civ. P. 59(e). Mr. Smith must file any objections to Magistrate Judge Perelman's R & R no later than 14 October 2005. Respondent will have until 28 October 2005 to file any response. Accordingly, the judgment entered by the Court on 16 November 2004 is hereby vacated.

In a closely related issue, Respondent filed a motion on 11 January 2005 to place this case on the electronic docket and compel electronic filing ("ECF") by Petitioner's attorney, Mr. Mancino, who theretofore had not been on the electronic docket.<sup>1</sup> (Docket # 20). Respondent attached a long list of more than fifty (50) filed habeas court cases in which Mr. Mancino had represented clients and referred to several cases in which Mr. Mancino averred that the Clerk's office had failed to serve him with a copy of a magistrate judge's R & R.

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<sup>1</sup>On 28 January 2005, Magistrate Judge Patricia A. Hemann ordered Mr. Mancino to file electronically in case number 1:04 CV 2156, as a means of expediting notice in that matter.

The Clerk's office has informed the Court that Mr. Mancino has been placed on ECF effective 1 August 2005. Accordingly, and in the interest of judicial efficiency, Respondent's motion is granted. This case is placed on the electronic docket and Paul A. Mancino, Jr. is ordered to utilize ECF filing forthwith and henceforth.

IT IS SO ORDERED.

/s/ Lesley Wells  
UNITED STATES DISTRICT JUDGE

Dated: 29 September 2005